

COMMISSIONERS APPROVAL

CHILCOTT *aq*

LUND *BT*

THOMPSON *JK*

TAYLOR (Clerk & Recorder)

Date.....May 8, 2006

Members Present.....Commissioner Greg Chilcott, Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

Administrative Officer Skip Rosenthal met with the Board for various administrative matters as follows:

The Board reviewed the contract for Susan Keys for her work on the application and submittal for the CARDD Grant. This is a \$100,000 grant for which Interim Planning Director Karen Hughes had already received approval from the Commissioners. If obtained, the grant will pay for a fly-over of the County for topography, contours and elevation of land. This mapping will be utilized for flood plain, planning, environmental health and roads. The contract for services will pay Susan \$1,000 for her work on the application and submittal for this grant. Commissioner Thompson made a motion to sign the contract for services with Susan Keys for the work on the CARDD grant. Commissioner Lund seconded the motion and all voted "aye".

Skip presented numerous employee action forms for signatures.

Commissioner Thompson made a motion to have the Chairman sign a credit application to Terex Utilities. Commissioner Lund seconded the motion and all voted "aye".

The Board continued the meeting with Dale Brown in regard to the Family Transfer matter. James McCubbin, Deputy County Attorney, was present for this portion of the meeting. James stated he visited with George Corn and George expressed the Board of Commissioners could exercise discretion on this particular case and there was no reason to do any further research on equitable estoppel. If the Commissioners feel there is an equity issue, it would be a good idea to allow the family transfer.

Jake stated Dale decided not to attend this meeting because he was rather upset about the issue. Jake stated Mr. Brown's son has now purchased a mobile home and he has placed the mobile home on a lot paying rent, which has muddled the issue. He stated he is glad to hear George's opinion.

Karen stated, procedurally they still have to apply for a family transfer. Nedra stated just because other offices make promises and screw up, her office is being forced to break the law and cover for them. She stated she resents that and definitely wants a letter, which she will record with the family transfer. She feels this will cover her as she 'breaks the law'.

Commissioner Chilcott stated this is the Board's discretion on approving or denying, but if this is a Clerk & Recorder responsibility we are simply getting the facts out. Therefore, the memo confuses him.

James stated the only way they can approve is through the principles of equitable estoppel. Case law shows that this cannot apply to the law in regard to facts. But other research shows that the general principles of estoppel can be applied. George feels it is not worth doing all the work, and if the Board of County Commissioners feels there are sufficient facts to support equitable estoppel, then to go ahead. In terms of the decision, this is a mixed decision-making process; however, the Clerk & Recorder decides what can be recorded. She does have veto power on recording a document. Because of allegations by County employees, an inequity has occurred and litigation could occur. When you talk about estoppel in regard to County employees it needs to be a decision by County Commissioners. A joint decision would be best.

Commissioner Lund stated she agrees with Nedra. Just because another employee made a mistake, Nedra should not be forced to violate the law. She suggested they review this as a 'subdivision for lease or rent issue' and leave the responsibility to the Commissioners. She stated they should put the house on the other parcel and not violate the law. Commissioner Lund further stated Commissioner Chilcott asked Harold Blattie about this issue and he agrees this is not a lease or rent issue as it is for their family. She stated there is too much attorney interpretation on this issue and the Commissioners should make the decision.

James stated the problem with that course of action is if there are two mobile homes, then it becomes a trailer park. Commissioner Lund responded that he has to build a stick frame home. She said the Board could tell Environmental Health to allow a septic tank. James said the Board would be consciously telling a department head to break the law (i.e.: Environmental Health).

Commissioner Chilcott stated they are looking at the County Attorney's opinion in regard to estoppel and in court their position would be defensible. If the Board of County Commissioners knowingly violates subdivision and environmental health regulations, then the county is not defensible in court. If Nedra is willing, she can submit the memo from the County Attorney.

Karen stated there is a DEQ approval for two single-family dwellings, but not for a mobile home court situation. Two mobile homes will trigger the trailer court issue under the law.

James stated if the facts support equitable estoppel, then the legal issue trumps the law, so Nedra should feel more comfortable. Nedra stated that is fine; she wants to help work this out, but she wants to be covered under the law. James said the equitable estoppel allows it to be eligible for family transfer. The Board of County Commissioners needs to make sure there is no evasion.

Commissioner Lund stated they should be able to use the equitable estoppel and allow this to be a 'lease or rent issue'.

Commissioner Thompson stated it seems there was a failure by the County to promptly move forward on the determination of the septic, flood plain, etc., and that by not moving forward in a timely fashion they have put Mr. Brown into a difficult circumstance. The easiest thing is to allow the family transfer, as he simply wants his son to have a section of his land. For the County to put roadblocks out there does not seem fair. If there is legal advice as to what can be done, Commissioner Thompson suggested they move forward on the family transfer. He stated Nedra should record the County Attorney's opinion letter and a letter from the Commissioners which can be attached with the family transfer application. Commissioner Thompson felt there is no deception in this particular issue with Mr. Brown. He does not want the County to be a thorn in the citizens' side when this issue is to benefit the children.

Commissioner Chilcott said he appreciated Nedra's desire to follow the law, as it shows the integrity in the Clerk & Recorder's Office. He felt Mr. Brown worked in good faith and is sorry this issue had to come forth. He also stated it is James' responsibility to bring the law to the attention of the Board of County Commissioners.

Commissioner Lund stated this is wrong because they are ordering the Clerk & Recorder to do this. Commissioner Chilcott stated they are not ordering the Clerk & Recorder to do anything; this is a finding of fact.

Commissioner Thompson made a motion to send a memo from the Commissioners and the County Attorney that equitable estoppel applies in this family transfer application of Mr. Brown, and to move forward with the Family Transfer. Commissioner Chilcott seconded the motion. Commissioner Lund said she feels this puts the Clerk & Recorder in a bad position. Commissioners Thompson and Chilcott voted 'aye'; Commissioner Lund voted 'nay'.

Jake stated the Planning Staff went into the reversal of what policy had been. When he read George Corn's response it appeared that he really did not say James' interpretation was wrong, but rather it would open the review of Subdivisions for family transfer. James stated George is not present to respond and he is who should respond.

In other business, Commissioner Chilcott participated in a conference call with the Montana Joint Powers Trust Board of Trustees.

The Board held a public hearing for new fees and increase of fees in the Planning and GIS Office. Commissioner Lund called the meeting to order and read the legal notice. Commissioner Chilcott was not present for this meeting, due to the above-named conference call.

Interim Planning Director Karen Hughes indicated the increase in fees for copies is for the color copies, which cost more than black and white. In the Interim Zoning Development Permit and Variance, since this is not broad scale a lower amount would be more appropriate, but since this is more complex it would require a higher, more complex review at \$1,000.00. In regards to the appeals and extension, those fees are based on an average range compared to other Counties. In regard to the subsequent minors, they simply added a fee per lot and stayed with the existing fee of \$900.00. On the final plat review they increased the fee from \$200.00 to \$375.00, with a per-lot fee.

In regard to the floodplain analysis, there is no existing fee and they would like to establish a fee of \$200.00. This money is for the review process, as required under the subdivision regulations.

Commissioner Thompson asked about the per-lot fee. Karen stated the extra monies would be derived, whether it is a minor or major, and will be based on the number of lots. Commissioner Thompson asked about the interim zoning and the change into an actual zoning development permit. Karen stated the interim zoning is unique and complex and the charges could be much less in other zoning issues. The rules for the large retail sales review are very complex.

In regard to the establishment of GIS fees, Ken stated these fees reflect the time and materials for the maps and data. He stated certain map costs have actually gone down because of the ability to perform processes digitally. Commissioner Thompson asked if they are showing a profit or are operating at a loss. Ken stated there is no loss or profit. Commissioner Lund said they should include 'shipping' a tube. Ken stated they could add shipping and handling. In regard to the road petition, this is naming the road, not abandoning it. He stated GIS must determine the location of the road, go out and GPS the road, enter the data file into the system, and then calculate addresses and send out approval letters. \$125.00 is a conservative average, and has no profit. There is no profit involved. Ken stated they incorporate the GPS into their fieldwork. They do not make a special trip. Commissioner Thompson said there appears to be no profit on the labor.

Public comment. No comment made.

Commissioner Thompson made a motion to approve the proposed fee increases and new fees for Planning and GIS. Commissioner Lund seconded the motion and all voted "aye". Commissioner Thompson made an amendment to make the motion effective immediately (See Resolution No. 1854). Commissioner Lund asked Karen if there were some subdivision applications that would cause trouble on the effective date. Karen stated no. Commissioner Lund seconded the amended motion and all voted "aye".

The hearing was adjourned.

The Board held a public hearing to increase the office hours in the Planning Office. Commissioner Lund called the meeting to order, reading the legal notice. Currently the Planning Office is closed to the public between the hours of 9:00 a.m. and 1:00 p.m. Karen stated they have managed to get their backlog down to zero, which was streamlining their work, dropping the office hours to the public. In response to the fact that we have reduced the backlog and initiated some planning projects, we felt it was time to revisit the office closure. She has gotten feedback from the public and Planning Board members and if they are getting ahead of the game, if it binds them to the end of the year, then why not keep it so to they can work on the other planning projects and the upcoming zoning issues? We are sensitive to the fact that it is a burden to consultants and other departments and to the citizens. She thinks it would be easier to keep it the way it is or open it, not set up different office hours. Karen feels if the Commissioners want to do this they are ready to do it.

Public comment: Jake Kammerer would like the office open so a planner is available in the morning. One huge issue is the inability to even have a drop box and having to make two separate trips. Having a front office person to handle the traffic at 9:00 makes sense. For efficiency, when a citizen wants to visit with a planner, there are enough planners on a rotational basis; it should not affect their work process one or two days a week.

Jean Kammerer stated there are certain things they do with Environment Health from 9-11:30, then they have to wait until 1:00 to do something with Planning. The cost of fuel is a factor.

Nedra, Clerk & Recorder said when they are not open her department takes the brunt of the citizens' anger. County offices are here to serve the public.

Richard O'Brien stated it sounds like the Planning Director has no problems, so they should act on that.

Commissioner Thompson said this was a mechanism to allow them to catch up and consequently be able to serve the public more efficiently. It is difficult to close a public office, but there was a lot of contact with the citizens for sufficiency reviews. The Interim Planning Director stated they are caught up and they could open the door. This action was not intended to be long term; he commended the staff for the amount of work that has been done.

Commissioner Lund enumerated the responsibilities facing the Planning Department: Voluntary zoning, Neighborhood plans, Big Box Ordinance, Subdivision regulations, Highway 93 corridor, recovery contracts for road, park board assistance, Neighborhood plan #3, impact fee study, County-wide zoning, stream-side setbacks, transportation planning, building permits for big box stores, and Planning Board land use ordinances. She said remaining closed for another 45 days might allow the Planning Department to get ahead on these, and that the current resolution can remain in effect until July 1, 2006.

Karen stated she sees the argument either way; it is a good time for the Commissioners to make that decision. Law mandates many of the above-listed items, but they realize the need to have citizens have contact. They are working at various levels on those projects. None of those items has fallen through the cracks. They will continue to do that, and their ability to do so changes if the office is open. They have a plan in place to rotate the planner at the front office.

Glenda stated they never got the training; no drop box was ever set up.

Jake in the private sector we are trying to do our job and there was not a drop box.

Commissioner Thompson said opening at 9:00 A.M. would allow an hour of free time. When we moved to close the office in the mornings and open at 1:00 P.M. it was an interim arrangement. If the office is current with its workload it is appropriate to re-open it in the morning. If the workload necessitates, we can re-assess and make another adjustment.

Commissioner Chilcott was now present. He asked Karen if they can keep up. Karen stated their first priority is their mandated work and they can keep up with that. The extent of the other priority work, as mentioned above, might affect their ability to remain on schedule. She stated they do not want to stall out on any projects. Commissioner Chilcott stated they must meet the legal mandates and serve the public. The revenues are not keeping pace with the service demands. There are more demands on Planning, due to the proactive planning. But we have budget constraints, due to keeping our taxes in check. We can re-open the office from 9:00 A.M. through 5:00 P.M., but must keep our options open for future situations.

Commissioner Thompson made a motion to open the office to the public from 9:00 A.M.-5:00 P.M., effective May 5, 2006. (Rescind Resolution # 1731, see Resolution # 1855) Commissioner Lund seconded, commenting that she took the heat for the closure, but if everything is okay now, she will support this. All voted "aye".

The Board held a meeting with the Salary Compensation Board.

The Board held a brown bag working session, as Lake County presented their density mapping.

In other business the Board held a public hearing on a Request for Commission Action for a Floodplain Permit Applications Variance Request from Lynn Bates. Present at this meeting was Civil Counsel James McCubbin, Flood Plain Administrator Laura Hendrix, the Applicant Lynn Bates, and the Applicant's Consultant, John Horat of Bitterroot Engineering Design.

Laura presented a Request for Commission Action as follows:

REQUEST FOR COMMISSION ACTION

OG-06-05-542

Meeting: May 8, 2006 at 2:00 pm
Request: To act on a Floodplain Permit Application Variance Request

I. ACTION REQUESTED

This is a request from Lynn Bates, represented by Bitterroot Engineering & Design, to approve a **Variance Request** to meet the minimum development standards of the adopted Ravalli County Floodplain Regulations as part of a floodplain permit application.

II. BACKGROUND

Lynn Bates submitted a floodplain application (file reference FA-05-16) to complete work within the floodplain of the Bitterroot River. One requested work item is to install a new 2" diameter pressurized sewer line approximately 1800 feet in length through the floodplain and bore the sewer line under Big Creek to connect to an existing drain field. The existing drain field is located on the west side of the property and is elevated above the 100-year floodplain. The project area is identified on the regulatory floodplain maps as the floodway portion of the 100-year floodplain. The adopted county floodplain regulations prohibit new individual sewage systems of all types whether for temporary storage, treatment or disposal in the 100-year floodplain. The proposal to bury the sewer line portion of the new individual sewage system within the 100-year floodplain varies from the development standards of the Ravalli County Floodplain Regulations.

III. RECOMMENDED MOTIONS

That the variance request from the Ravalli County Floodplain Regulations, Chapter 4, and Table 4-6-1 for the proposed installation of the pressurized sewer line in the 100-year floodplain be **denied** based on the following:

- A. Chapter 6-8 (2) proclaims that "the establishment of a use otherwise prohibited" is an action that "shall not be allowed by a variance". A new individual sewage system is a prohibited use as identified in Chapter 4, Table 4-6-1 in the floodplain regulations; therefore this proposed variance is not approvable.
- B. Chapter 6-7 of the floodplain regulations states: "The Board of County Commissioners shall not approve the variance application unless it makes a positive finding, based on substantial competent evidence, on each of the [review criteria]." Based on the findings of fact in the staff report, a positive finding for approving the variance was not found for each of the review criteria.

IV. STAFF REPORT

VARIANCE REQUEST

The applicant has requested a variance from Chapter 4, Table 4-6-1, of the Ravalli County Floodplain Regulations, which prohibits the development of new individual sewage systems of all types within the 100-year floodplain.

Compliance with Variance Review Criteria

A. There is a hardship on the applicant in carrying out the strict letter of this Code as distinguished from a mere inconvenience.

Findings:

1. The application specifies that the preferred residential home site is the "present northern portion of land out of the floodplain".
2. The application states: "Based upon failed groundwater monitoring in the northern portion of land, the only viable septic site is on the one acre piece of land west of Big Creek."
3. The floodplain regulation findings state: "The inability of a landowner to develop to the 'highest and best use' because of this Code does not necessarily create a hardship."
4. The floodplain regulations do not contain a definition of "hardship" or "inconvenience".

Conclusions:

1. The applicant could relocate the home site and the sewer line to the piece of land west of Big Creek outside of the 100-year floodplain thereby meeting the requirements of the floodplain regulations.
2. There may be inconvenience, but there is no hardship in carrying out the strict letter of this Code.
3. There is a **negative** finding on this review criterion.

B. The hardship does not directly result from the actions of the applicant.

Findings:

1. No hardship has been identified (see above).
2. The location of the proposed house is the "preferred building site for the 110 acre parcel of land" as stated in the application.

Conclusions:

1. Other sites outside of the 100-year floodplain are present on the parcel.
2. The perceived hardship is a direct result of the actions of the applicant's desire to locate the home at the specified site instead of the locations outside the 100-year floodplain.
3. There is a **negative** finding on this review criterion.

C. The variance is the only option available to the applicant to afford relief from the hardship.

Findings:

1. No hardship has been identified (see above).
2. The application claims that "this is the only viable option for effluent disposal".
3. As referenced above, there are available options to relocate the home site and sewage system to meet the development standards of the adopted floodplain regulations.

Conclusions:

1. There is no hardship because there are other home site and sewage system locations outside the 100-year floodplain that would not require a variance.
2. There is a **negative** finding on this review criterion.

D. The variance is the minimum necessary to afford relief from the hardship.

Findings:

1. No hardship has been identified (see above).
2. The applicant states that "the variance is the minimum necessary to afford relief from developing the parcel except for the land west of Big Creek".
3. The minimum floodplain development standards are set forth in the Ravalli County Floodplain Regulations, Chapter 4, and Table 4-6-1. This section references the County's Sewage Disposal Regulations (presently known as the Subsurface Wastewater Treatment and Disposal Regulations).
4. The standards require that the wastewater treatment system be located a minimum of 100 feet from the 100-year floodplain.

Conclusions:

1. There is no hardship and even if there was, the proposal is not the minimum necessary to afford relief from the perceived hardship.
2. The minimum standards can be met by relocating the home site and sewage system to the land west of Big Creek.
3. There is a **negative** finding on this review criterion.

E. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

Findings:

1. Chapter 1-6 (a) of the Ravalli County Floodplain Regulations states: "The purpose of this code is to promote the public health, safety, and general welfare. To that end, this code shall be implemented to protect human life and health to the greatest extent."
2. There is at least one alternate potential home site with area for a sewage system on the property that would meet the minimum standards in the floodplain regulations.

Conclusions:

1. The threat to life and property are higher with the proposed design than a design that meets the requirements of the floodplain regulations.
2. The proposed location of the sewage system could become detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
3. There is a **negative** finding on this review criterion.

F. The variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create a nuisance, or conflict with existing state or other local laws.

Findings:

1. Chapter 1-8 (a) of the Ravalli County Floodplain Regulations states that "proposed projects shall comply with all other applicable local, state and federal rules or regulations".
2. Chapter 1-8 (b) of the Ravalli County Floodplain Regulations stipulates that "if the requirements of this Code conflict with any other local, state or federal rule or regulation, the most restrictive requirement or those that impose the highest standard shall control".
3. The application indicates that the "[Ravalli County] Board of Health has approved the construction of the sewer main contingent upon a flood plain permit and presenting engineering plans and specifications for review".

4. The Administrative Rules of Montana 36.15.605 (2) states "the following artificial obstructions are also prohibited within the designated floodway: (c) solid and hazardous waste disposal and individual or multiple family sewage disposal systems".

Conclusions:

1. The Ravalli County Board of Health has conditionally approved the sewer line; however, the Ravalli County Floodplain Regulations and ARM both prohibit sewage systems in the floodway portion of the 100-year floodplain and thereby impose the most restrictive requirement.
2. The proposed variance will result in increased flood hazards, present additional threats to public safety, create a nuisance, or conflict with existing state or other local laws (specifically conflicting with ARM 36.15.605 (2)(c)).
3. There is a **negative** finding on this review criterion.

G. A reasonable alternate location that would not require a variance is not available.

Findings:

1. The application states that "2006 groundwater monitoring may reveal another potential septic site".
2. As referenced above, there are available options to relocate the home site and sewage system to meet the development standards of the Ravalli County Floodplain Regulations.

Conclusions:

1. There are reasonable alternate locations available to locate the sewage system that would not require a variance.
2. There is a **negative** finding on this review criterion.

H. The proposed use would be adequately protected and flood-proofed.

Findings:

1. The application states: "The sewer line will be adequately protected and flood-proofed by being buried a minimum of depth of six (6) feet."
2. The application indicates that "no scour is anticipated as the 100 year flood velocity is estimated at about 3 [feet per second] fps".
3. Larry Schock, with the Montana Department of Natural Resources and Conservation (DNRC) provided the following comments regarding the 3 fps velocity estimates impact on scour: "should be OK unless there is some sort of structure or feature on the property which will cause some sort of local acceleration of the water and cause scour".
4. During a phone conversation in February, 2006 Mr. Schock stated that "there aren't any good scour equations" for sewer lines and is therefore difficult to determine scour depth.

Conclusions:

1. The proposed septic line may not be adequately protected and flood-proofed as scour depth has not been sufficiently identified.
2. There is a **negative** finding on this review criterion.

V. REMAINING ISSUES:

1. Within five (5) days following the decision and if the Board approves the variance or approves it with conditions, the Floodplain Administrator shall mail the decision to the Department of Natural Resources and Conservation for concurrence, modification, or rejection (Note: The DNRC has the ability to modify or void the decision of the Board of County Commissioners.)

2. The Floodplain Administrator shall mail the variance decision to the applicant within seven (7) days of the date of the decision.

Attachments:	Map 1-Floodplain Map Exhibit A-Ravalli County Floodplain Regulations Exhibit A-1-Floodplain Variance Application Exhibit A-2-ARM 36.15.605 Exhibit A-3-Email from Larry Schock, DNRC
Staff:	Laura Hendrix, CFM Floodplain Administrator
Date:	May 7, 2006

Commissioner Lund stated she just received this Request for Commission Action and she has not had any time to review this variance request. James stated the Commission could take the testimony and then make a decision at a later time. Commissioner Thompson indicated Chapter 6-8(2) proclaims that "the establishment of a use otherwise prohibited" is an action that "shall not be allowed by a variance". If it is not even legal to approve then why review the criteria? James stated the public hearing is to meet the legal requirements of a variance request. James stated under the floodplain regulations; he does not think the variance is approvable.

John Horat stated he is at a quandary because a few years ago, under a different administrator this was approvable. The past administrator stated that is a utility line, which is part of the existing system. Laura stated it is not a utility line; it is instead part of the sewage system. The Board of Health approved the pressurized line and Mr. Bates purchased the property based on a piece of property that was outside the flood plain to pump the pressurized line to. The new administrator (Laura Hendrix) determines this not to be a utility line. John stated the applicant has incurred significant expense. The applicant also received a letter of map revision from FEMA. Engineer Larry Schrock concurred this is a permissible activity. Effluent is not a toxic material and it is being buried deep enough. John stated he also just received this Request for Commission Action that was prepared by Laura and she does not interpret this as not being eligible to a variance.

James advised the Commissioners that in order to determine if this is eligible for variance, they must determine if this is a prohibited activity by the flood plain regulations. Is this a sewage system or a permit?

John stated he would like a clarification in the process. James said if it is a sewage system it is not a possibility; if it is a utility line it is a possibility. John stated pumping the effluent is not a health and safety issue.

Neighbor Colleen Powell stated she has no problems with the effluent being pumped.

Michele DeGroot asked in regard to a health issue; how will a sewer line go under Big Creek up to the one acre without ever leaking? Even if it goes under the bridge and is

heated, the electricity may go out, the pipe may crack and sewage may go into Big Creek. She felt it is a health issue.

Dick Neville lives next door to the Bates'. Dick has had his land perked and he has a perk hole that works well. He does not have access to the back 40 acres of his parcel but he has an approved perk hole. He stated Lynn Bates might use that perk hole as an alternative. Michele Neville stated that would save Mr. Bates having to run the line all that way.

John stated if they follow the regulations, they should run the line 6' in the air. However they decided to bore the line under Big Creek and be 6' below frost depth. They would not have any thing to heat. The 310 permit was approved for this bore crossing.

Laura said John stated a public system is allowable in the flood way. Toxic chemicals and public sewage systems are both prohibited in the flood way. In regard to this being a utility line, she received this information from DNRC. The only thing that falls under utility is power, etc.

Public comment was then closed. Board deliberation followed.

Commissioner Lund said, 'while I'm not sure of what I am talking about, would the areas on the map give enough perk?' John stated the DEQ-4 rules allow certain things to be built, but the local regulations require a 100' setback. There is a possibility for the second site, but the Commissioners do not have all the information on that spot. If the monitoring proves successful, that site could be used.

Commissioner Chilcott stated the discussions in the past with the Board of Health were getting through the flood plain and fringe. He asked how that worked. Laura stated the application for the grade and utility line is separate from this variance request and should be approved sometime this week. John noted a 6' bored pressure tested line would give that element of safety for the public health and safety. He asked where the danger to the citizens lies. He stated they are not worried about a flood 6' below grade.

Laura stated while the line might not be subject to scouring there is ground water inundation, which could impact the line. The wastewater treatment system is prohibited in the floodway by the State Regulations as part of ARM and this line is part of the wastewater treatment system, not a utility line.

James indicated if the Commissioners determine this is not dangerous, they still must follow the regulations. If the Commissioners feel the regulations are wrong, then the regulations must be reviewed. Do not disregard the regulations just because you do not like them.

Commissioner Chilcott asked about this specific request in regard to the ARM definitions. Laura stated the ARM does not specifically identify this, but Karl Christians

of the DNRC says any line, tank etc. is part of the wastewater treatment system and it is prohibited in the flood way.

John stated he visited with Larry Schrock of DNRC and Larry advised him this was an approvable activity. He stated he would not have applied for this variance had it not been for his conversation with Larry. John stated as long as the utility lines are under the flood way and fringe he interprets this is approvable as long as you go below the level at 6'.

James stated it seems they have two different interpretations from DNRC and two different interpretations of flood plain administrators in Ravalli County.

Commissioner Chilcott noted they have different regulations than DNRC. He asked if this is one of the instances where the county's regulations are more restrictive than the State of Montana. Laura stated the answer to that is 'yes' in the flood plain and fringe but not in the flood way. She stated the regulations allow interpretation by the Flood Plain Administrator. She stated she did make that interpretation in writing.

John stated under ARM 36.15.604 and table of regulations this variance is permissible. James stated the issue is if it is a utility line. If it is part of the sewage system the question becomes if it is permitted.

Commissioner Thompson stated many years ago a friend of his owned some property north of Darby and the river cut behind his house, cutting him off from all of his livestock. The man's house was built when the river was a couple hundred yards away but the river moved. He stated no one would have expected that to happen, and in this case, he sees the same issues. He stated there could be some danger to public and safety. Commissioner Thompson stated he sees this is prohibited because it is part of the septic system. He stated he does not see this as part of a utility line and therefore he is not comfortable granting the variance.

Commissioner Chilcott stated calling this a utility line does not fly with him as this is part of the system. It is interconnected and they do not work independently. He stated he does not feel they have the latitude to say it is not part of the system. If the other Commissioners concur then they do not need to move forward with the variance criteria.

Commissioner Lund stated she agrees this is part of the system. She is also concerned with Mr. Schrock's letter, but DNRC has the ability to modify or void the decision of the County Commissioners. She asked why are they are wasting their time with this request as it should be sent to DNRC for a decision.

John stated under the previous Flood Plain Administrator this was a permissible activity. He did receive a permit and approval by the Board of Health on another variance.

Commissioner Thompson stated he sees continual findings of areas outside the flood plain meeting the requirements, and the house site could be relocated. John stated there is a 1 1/5 acre site that would lend itself to a building site.

Commissioner Chilcott stated the Board needs to determine if this line is part of the system. Commissioner Lund stated that is pretty clear to her. James if that is the finding; this is not subject to variance.

John asked if that is not what the variance procedure is. James stated the regulations are very strict and do not allow a variance. John asked if they could apply to the Board of Health for a 100' set back. James stated he is not familiar with the Board of Health variance procedure. If he does that kind of variance, he would need one from the Flood Plain Administrator and Environmental Health. John stated if he would have known it was prohibited, he would not have applied for the variance and Mr. Bates would not have purchased the property. Commissioner Thompson stated if there are other places available to build, Mr. Bates does not need to use the variance procedure.

Commissioner Lund made a motion as follows:

- due to 36.15.605 (2) C in the ARM
- under the definition of DNRC as a prohibited use, as this line to the drain field is part of the sewage system and not eligible to a variance,
- under Table 4-6-1 of the flood plain, and 6-8(2) of the flood plain variance regulations

the Commissioners can not consider this for variance. Commissioner Thompson seconded the motion and all voted "aye".

The hearing was adjourned.

In other business, the Board addressed a request to amend the growth policy for stream protection zones. This request came from Barbara Kitchens of Heartwood Consulting who was representing the Bitterroot Realtors. (It is noted in the letter from Barbara Kitchens, they plan on seeking grant funding for this issue which needs to be completed prior to December 31, 2006). Present at this meeting was Civil Counsel James McCubbin, County Attorney George Corn, Interim Planning Director Karen Hughes, Flood Plain Administrator Laura Hendrix and various citizens.

Barbara stated she and other members of the Bitterroot Realtors have been working on the stream side issues and following the legislation that failed in 2005. They have identified a process, based on science, which is being formulated by H2o Design Group, Clint Brown. Some preliminary set back work has been done and they have shared this with a larger coalition group. Questions and comments that came up during their meetings was that the county does not have enough money to do this.

Clint stated if this was mapped it would be easier to define. The group has found some money, and Clint offered to do some mapping if they secured a grant. This would include the major tributaries for setbacks. Barbara stated this is an environmental grant

to realtors. The county would need to amend the Growth Policy so they could qualify for the grant. Barbara stated they have presented a vision statement and possible resolution of intent to adopt the proposed streamside preservation zoning district. She stated last week Clint Brown presented this to the Planning Board and after discussion they determined they do not need a resolution or amendment to the Growth Policy. Rather they need a letter that states the Commissioners understand this is being mapped.

Barbara stated they hope the map will include signs on the streams showing the preservation and buffers. They also hope to make this an educational project for the citizens while this mapping is going on. She stated they are simply asking for a letter of support from the Commissioners so they can meet their time lines for the grant money. She stated they are excited to provide some science and help to the citizens.

Rick Furman stated in the county budget meetings the GIS Department and Planning Staff stated one of their objectives is to have a flood plain overlay with accuracy. He asked if their objective will be compatible with Barbara Kitchens request. Clint stated he hopes it will be compatible and he will work with the county staff in order to achieve this.

Chris Clancey, a Fisheries Biologist of the Montana Fish Wildlife and Parks, advised the Commissioners not to accept the methodology that Clint will be utilizing for his mapping project. He stated this is attractive but he has been authorized by three biologists to say there are significant technical problems with this methodology. He stated Clint will work the method in order to make it feasible. Chris stated his mapping will be based on Rosgen Methodology and no hydrologist likes this Rosgen Methodology. Chris stated the county should not accept this as their method. The collaborative group Chris has been meeting with states this is a political methodology, and it is not scientific. Our group has been working on this issue for quite some time. Chris stated they have not seen the photos produced to the Commissioners this date, nor have they been consulted. He stated their group has another meeting on May 22nd and they have not even accepted their own method of study as of yet.

Commissioner Thompson asked what happens if the legislature makes the set back 300'. Chris stated that may or may not be passed, and hopefully the bill will review the locally based method. Commissioner Thompson stated he lives below Mill Creek and local control seems to work better due to some of the high bluffs and grades to the water.

Chris stated Clint's concept does not have good applications. He stated they need to review these issues in regard to set backs etc., and they are not ready yet.

Commissioner Chilcott stated he is surprised that Chris sees this as a new project when he has heard this method at another presentation. Chris stated he is familiar with Clint's method having reviewed it as well as other professionals. And they all see a problem with it. He stated some think it will not work. He stated with any stream sides the Rosgen Methodology utilizes math, but as you get out in the field there are some problems. It gives wide set back on valley fields and narrow ones on the mountainsides. Commissioner Lund asked how long this take will. Chris stated it is hard for his group to

meet, but they could make a decision in a few meetings. He stated he is committed to making this work, but they need a better mapping type than Clint is proposing. Commissioner Lund stated they are worried about the legislature passing a set back that would be difficult to work with. Chris stated they should not work on the basis of fear. He warned the Commissioners not to accept this proposal, as most professionals do not accept this.

Barbara stated they are not asking for any methodology, just a letter explaining 5.4 of the Growth Policy. When the map is completed they can bring it back to the Commissioners and if they can utilize it, to please feel free to do so. She stated the Board of Realtors' intent is to try and do some environmental preservation. She stated if the county does not assist them in obtaining the grant funds, they will turn to private dollars if we can not get grant funds, we will get the funds from private dollars, but their concern is that the project will not be done by the end of the year. In any event, they plan on moving ahead, with or without the county.

Planning Board Member Gary Zebrowski asked about having 1,400' in one area and 14' in another. Clint stated that would be an example of the West Fork and East Fork areas, and they are not being done because the county already has those under Floodplain regulations. His study will concern itself with tributaries, and agreed 'some things do need to be ironed out'. But, he felt this mapping will move things in the right direction. He agreed there are special situations where stream sides have been altered and straightened, but felt this methodology does work.

JR Iman who sits on the Bitterroot Conservation Board stated streams are narrower on the mountainside than in the valley. 90% of the discussion he has heard or participated in with consultants is how people want to know how it will affect them. He felt this mapping plan helps the property owners, government officials, recreationalists and others. He stated he owns own property with a stream down the middle of his property and 300' on each side would take 1/3rd of his property. He stated this mapping project is important. This will not decide how far on either side, but it will provide a process to define where the stream is. JR stated Chris Clancey gives us information from the fisheries point of view, which is important, but he felt it was equally important to know where the stream is, then make a determination.

Eddie Orwell, President of Bitterroot Trout Unlimited stated the proposed Senate Bill No 173 gives 300' of set back on the main river and 150' on the tributaries. Eddy stated he has worked on this group, and the Realtors walked away from the table for four months. By doing that, they lost quite a bit of time on the project. He asked how they are supposed to protect the streams while they are waiting on the process.

Clint stated his goal is to have rough draft by end of year.

Commissioner Chilcott stated the realtors have offered the county data by way of maps. He stated the Commissioners are not agreeing to anything in regard to the setbacks. Therefore he is confused as to why this is such a hot topic. We are only looking at data,

and the county cannot afford to accumulate it on their own. He stated it was 'beyond him to look a gift horse in the mouth'.

Commissioner Thompson stated the Planning Department is working on the setback issue of the river.

Commissioner Lund asked Eddie what he proposed in regard to the setbacks. Eddie stated setbacks protect our water for quality. Eddie suggested interim zoning while they are waiting for the mapping. Commissioner Chilcott noted when the planners perform any review, they identify the wetlands etc., and the Commissioners do not set arbitrary numbers. Karen stated the planners' review is only for subdivision, not construction of homes. Eddie stated there are examples of homes already constructed on the river banks.

Realtor Bob McClusky advised the Commissioners to take control of this or the 'legislators could screw us'.

Kathleen Driscoll stated all the sudden we have all of these people who 'create a trust factor'. She stated everyone needs to stay as a group and allow everyone's opinion.

Terry Polumsky of the Bitterroot Board of Realtors put a forum together for the discussion of the Senate Bill. At one meeting Barbara was asked by Commissioner Chilcott to present some language for this proposal. She stated they are not trying to work around any working group. They are just trying to get a map. The urgency is that a working group of legislators has been working on this issue also, and local control is always better. She also noted they do not want to lose their grant money.

Sonny LaSalle noted in the development of the Growth Policy, this issue was debated. He stated there is a lack of trust. The areas we can agree on is that set footages are not a good deal because of the variances. There needs to be a methodology established with peer review and acceptance. Mapping is a great idea. He suggested the Commissioners include language in their letter of support to indicate that the methodology will be agreed upon and will be worked out with the scientists. He felt it needed to be at the Commissioners' discretion. Commissioner Chilcott asked if he could make that work. Clint asked if he has to wait until he obtains the agreement before he can do any mapping. He stated while all of this is being discussed he should go forward with the mapping. Chris Clancey stated he is not convinced they can make it work. He has a 'very big trust issue (or lack of) in this mapping issue'.

Commissioner Lund made a motion to send letter of support to the Board of Realtors in regard to the Growth Policy Section 5.4 so the mapping can move forward. Commissioner Thompson seconded the motion noting there does not appear any predetermined outcome for the Commissioners to accept anything. He stated it does not matter who does the mapping. And they would hold public comment meeting at a later time. Commissioner Chilcott concurred it is simply data and that data can be checked. Also, how they apply that data will be a regulator decision. Commissioner Thompson stated if someone else wants to do mapping, to go ahead. Commissioner Lund suggested

Clint and Chris work together. Chris stated he has tried to work with this group to no avail. All voted "aye."

In other business the Board met with County Attorney George Corn in regard to the Middle East Fork Law suit against the Forest Service by three entities including Friends of the Bitterroot. George has reviewed the law suit and proceeded to relay some highlights. This is a federal suit, involving numerous federal laws, with forest service rules, clean water acts and healthy forest acts etc. The amount of land is not particularly large (5-6,000 acres). The suit claims public involvement was not complied with, and watershed and reforestation was not completely done. It attacks the Forest Service in regard to the procedure of EIS, bark beetle, conflict of interest etc. After setting forth those allegations the suit addresses the four federal laws for NEPA and CEQ regulations, Healthy Forest Initiative, Manipulation of Data, loss of soils contrary to federal law etc. They ask the Judge to stop the process by injunction, start the process over and award attorney fees. Attorney Alan Campbell of the Forest Service is working on this case. George stated he needed to review this detailed suit and there is a long history involving four major laws. Parts of the suit are very fact driven that they need to review. George stated the county could become a party to this suit and there are options that could be discussed.

Commissioner Thompson stated the clear cuts done in 60-70's have nothing to do with the current practice and the 'Friends of the Bitterroot' try to make everyone look at that. This is disturbing. After the fires of 2000, Commissioner Thompson was in Missoula at the Federal Courthouse and talked to the Forest Service in order to determine what the county could say about the fires of 2000 and their impacts. We had people who had sued the Forest Service and a decision was made without any input from our county. He stated Ravalli County needed that opportunity, and we should not be excluded from any of those decisions.

Commissioner Thompson stated they took the tour for the East Fork project and found many acres of trees that were dead that should have been included. But The Forest Service Personnel are the experts and therefore, he will support their plan. When the environmentalists were not happy with that plan, the Forest Service cut it back another 25%, and they still cut it back 25%. This area has one road in and out, and if a fire starts there, the fire could be intense. He felt it was the Commissioners' responsibility to look at public health and safety. Commissioner Thompson felt the county needs a place at the table on this lawsuit, even if it is an intervener status. The Forest Resource Council may have some money to assist RC&D if they would like to move forward with this. Or they could do a brief, "friends of the court" to address the public health and safety issues. When we read the Friends of Bitterroot letter to the editor, they say this is not about East Fork it is about the Healthy Forest Act by the President. They are simply stopping the Bitterroot projects and are making us a test case.

George stated resources of his office are limited due to their commitments as requested by the Commissioners. There are ways to be a friend of the court at the appropriate time. And in a suit like this, which involves federal legislation, the Commissioners still need to

review the issues of fire reduction as it relates to the citizens health and safety. The Forest Service has the responsibility to look after the communities also. The Healthy Forest Act has everything to do with looking after the communities. This is a poster child lawsuit and the Forest Service needs more help on this litigation. The county should be consulted on any settlement and the county should publicly support the Forest Service. George stated this is a role the county can take by way of resolution etc. Once you are a party in the lawsuit, the amount of work is overwhelming, so you may want to be a Friend of the Court, as we are not versed in forest laws.

Commissioner Chilcott stated the county needs to step up to this suit. Federal court forgets about local impacts. We do have some fiscal constraints, so we need to explore our options.

Commissioner Thomson commented about the pictures the Friends of the Bitterroot has taken for old growth trees that are infected with disease. He felt the county needs to be involved some how but they can not extend their resources beyond their reach.

George stated a perfect example of a settlement was in the Beaverhead County, and the environmental groups drag the conservationists through the mud. George stated the Forest Service has the horse power to win on this but this is going to be a 'donney brook'. He also stated there is a need to obtain help for the Forest Service Attorney Alan Campbell. The key thing the county can do is to be present at those hearings.

Nan Christians stated the first hearing is June 15th. Kit Sutherland of RC& D stated their goal is conservation of resources. They serve three counties and want to be in concert with the Commissioners. They have written the fire plan and were active in the rehabilitation of the forest after the fires of 2000. He stated they are concerned about the managed area in the urban interface. Even if the homes survive the fires, there are risks of sediment run off into the creeks for water quality. The RC & D would like to be at the table. They would need to have approval of the Board first and have not money for legal council. We would at least want to get behind the Commissioners and support this effort for local public health and services. Currently they work on the hazardous forest reduction with the F.S. and there are people we can work with.

George stated one thing that was frustrating in 2000 was the 54 million dollar cost. The lesson is that it took such a long time to do the studies, (State could log 6-8 months after the fire) but did not spend additional money to do the analysis. You have a law suit here, and if you do not throw the resources at it, you are wasting the money already spent.

George stated technically the court does not have to involve the county, but from the political aspect for the Healthy Forest Restoration Act, the counties should be included.

Commissioner Thompson stated it is frustrating that the environmentalists can say what ever they want (which includes things that are not true) but the county can't. He asked if the county could run an advertisement saying what is the truth and that the environmentalists are idiots.

George stated the Commissioners should call a press conference, make a statement about this issue. First things the Commissioners can do is write a letter of support for the Forest Service which will help in the court of public opinion. Commissioner Lund stated the county needs to put some pressure on the Forest Service so they put enough man power on the appeal process.

Commissioner Chilcott stated they need to look at alternative funding sources in order to join in as an intervener, and without pulling down the county's own staff resources.

Commissioner Thompson asked if they commit to an intervener status, when does the county make that known. James stated timeliness is a factor on intervention and an amicus brief is a light form of intervention on a technical level. George stated they are not versed in federal court laws. Commissioner Lund asked if the Forest Service could help in that regard. Nan stated if the Commissioners asked Dave Bull for that kind of assistance she would be confident some assistance could be given.

Kit stated RC & D can look at their resources to see if they can lend any assistance. They can also do some staff work. One person who helps them is an attorney who has done government work and they can check with them to see if he is available. The Commissioners stated that would be helpful.

Commissioner Thompson stated the Healthy Forest Restoration Act was non-partisan, bi-partisan and was not just haphazardly put together. This act made good common sense. The Board agreed they need to review their options and discuss this at a later time in order to decide their level of participation.